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09/739,844	12/20/2000	Rudy Bonefas	003636.0099	3893

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EXAMINER
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PHILLIPS, HASSAN A

ART UNIT	PAPER NUMBER
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2445

MAIL DATE	DELIVERY MODE
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12/03/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



### **DETAILED ACTION**

1. This action is in response to communications filed September 23, 2010. Claims 29 and 31-33 are canceled. Claims 1-18, 20, 25, 30 and 34-41 were previously canceled. Therefore, claims 19, 21-24 and 26-28 remain pending in the application.

#### ***Information Disclosure Statement***

2. The information disclosure statements filed October 26, 2010, September 3, 2010, and July 7, 2010 have been received and considered by the examiner.

#### ***Claim Rejections - 35 USC § 112***

3. With regards to the cancellation of claims 29, and 31-33, the examiner has withdrawn the rejection to the claims under 35 U.S.C. 112, second paragraph.

#### ***Claim Rejections - 35 USC § 101***

4. In response to applicant's argument that claims 19 and 21-23 are statutory as written, the examiner respectfully disagrees. Applicant argues that the claims recite a "protocol gateway" and a "client device" and directs the examiner to the recent Federal Circuit decision of *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. Oct. 30, 2008).

The examiner submits nevertheless that the Bilski rationale only applies to "process" claims as recited under 35 U.S.C. 101. Applicant instead is claiming "a message router", or a machine as recited under 35 U.S.C. 101. The test for whether a claim satisfies this statutory category is whether the claim recites some sort of structure

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in the body of the claim that enables the claim to be a machine. In applicant's claimed invention, although the claim recites a "protocol gateway" and a "client device" these are not elements of structure for the claimed message router. Accordingly the rejection of claims 19 and 21-23 are maintained.

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 19, 21-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

7. With regards to claim 19, although the claim recites a "message router", the claimed message router is merely comprised of a "load balancer module" and a "routing module". Giving broadest reasonable interpretation to the claims a "module" may comprise of software. Software fails to fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101.

8. Claims 21-23 depend from claim 19 and fail to remedy the deficiencies indicated above.

***Allowable Subject Matter***

9. Claims 24, 26-28 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter: Claims 24 and 26-28 have been amended to clearly define applicant's claimed invention, thereby distinguishing the claimed invention from the teachings of the cited prior art. More specifically, the prior art of record fails to expressly disclose the invention as a whole including: routing a message from a message router to a particular protocol gateway based on (i) a determined least recently used protocol gateway and (ii) a particular protocol utilized by a client device associated with the message, as recited in independent claim 24.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASSAN PHILLIPS whose telephone number is (571)272-3940. The examiner can normally be reached on M-F 9a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HASSAN PHILLIPS/  
Primary Examiner, Art Unit 2445